

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health
Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioners,

v.

PATRICK PERRY
Respondent

Case No.: A-00-80005

FINAL ORDER AND JUDGMENT

I. Introduction

This case arises under Title 6, Chapter 10A of the District of Columbia Code and results from the Government's impoundment of Respondent's dog following an unprovoked bite by the dog on or about March 3, 2000. The Government seeks to have this administrative court declare the dog to be "dangerous," and to have the dog determined to be "a significant threat to public health and safety if returned to its owner." D.C. Code § 6-1021.2 and § 6-1021.3. Under law, these findings would authorize the Government to destroy Respondent's dog. Respondent opposes the Government's application and seeks to have his dog returned to him.

Evidentiary hearings were held on March 29 and April 6, 2000 and the parties then requested and were permitted to supplement the hearing record with written submissions

containing additional evidence and arguments. The hearing record was closed on April 24, 2000.¹

Upon consideration of the memoranda filed by counsel and their oral arguments, the documents received into evidence², and the testimony elicited during the hearing including the direct observation of the witnesses and evaluation of their testimony, the administrative court makes the following findings of fact and conclusions of law.³

II. Findings of Fact

1. It is undisputed that Respondent, Patrick Perry, is and was on March 3, 2000, the owner of a dog named “Henessey,” (“the dog”) which has been identified as being of the pit bull variety or breed.
2. It is undisputed that on March 3, 2000, the dog engaged in an unprovoked bite against a passerby (“complainant”)⁴. This attack took place within the District of Columbia, in the vicinity of the 1100 or 1200 block of E Street, Northwest.

¹ A more detailed procedural history is outlined in the administrative court’s order of April 16, 2000.

² All statements, photographs, invoices, and other tangible evidence submitted by the parties between April 6 and 24, 2000 are hereby received into evidence.

³ Because of the accelerated timelines called for by D.C. Code § 6-1021.2, this Order and decision must be presented in an abbreviated fashion.

⁴ The complainant’s identity was furnished to Respondent, but will be omitted from this Order in the interest of maintaining his privacy.

3. The unprovoked bite resulted in broken skin and two cuts that were approximately ¼ inch deep on the complainant's right forearm. Complainant was treated and released from the George Washington University hospital on the date of the incident.
4. Immediately prior to the incident, the dog had been locked in a car for as long as six hours. The dog was highly agitated prior to and subsequent to the biting incident. The dog displayed aggressive behavior both in biting the complainant, and in charging at the animal control officer, Scotlund Haisley, when he attempted to capture the animal following the incident. The dog has at least the potential to repeat this aggressive behavior in the future if placed in similar circumstances, especially if confined for a long period in a car or other inappropriate space.
5. There is no evidence that the dog had any previous incidents of an unprovoked bite or attack. Respondent and his girlfriend, Cindy Still, regularly play with the dog and allow Ms. Still's children to play with the dog.
6. Respondent previously entrusted another pit bull dog to another person with a result that the pit bull dog was able to roam uncontrolled and at large. This dog was injured while roaming and then euthanized.
7. Respondent has recently moved to a residence located at 4909 Ayers Place, Southeast. The lease submitted in evidence by Respondent states that he may not keep a dog on the premises and no credible evidence has been produced to indicate that the landlord has consented to waive this provision.

8. The lack of credible evidence of a place for Respondent to lawfully house the dog in the District of Columbia creates a significant risk the dog will be without a proper home in the District of Columbia. This creates an additional significant risk that the dog will not be properly sheltered while within the District and may again be confined in a car or other inappropriate space for lengthy periods of time, thereby creating a significant risk of agitated and aggressive behavior, and of the dog escaping and roaming at large.
9. No credible evidence has been produced indicating that respondent has obtained or will obtain insurance coverage of the type described in D.C. Code § 6-1021.4(7) and in the Order of April 16, 2000.
10. The lack of credible evidence that Respondent has obtained or will obtain insurance coverage of the type described in D.C. Code § 6-1021.4(7) and in the Order of April 16, 2000 creates a significant risk that if the dog ever committed a second unprovoked bite in the District of Columbia, a complainant would not have access to all necessary or desirable health care and support because of a lack of recourse to Respondent's insurance policy.
11. Respondent has arranged to permanently place his dog in Warrenton, North Carolina in a home owned by his grandmother, Mary Perry. If the dog were immediately and permanently removed from the District of Columbia and transported to a permanent home in Warrenton, North Carolina, hundreds of miles from the District of Columbia, this would eliminate any significant risk of a second biting incident in the District, and would resolve the issue of finding an appropriate place to house the dog.

III. Conclusions of Law

A. Dangerous Dog Determination

12. The Government has proven by a preponderance of the evidence that Respondent's dog is a "dangerous dog" as that term is defined in D.C. Code § 6-1021.1(1)(A). The Government has presented undisputed evidence that the dog has "bitten or attacked a person without provocation." Moreover, Respondent does not contest that the dog meets the definition of a "dangerous dog" under District law, having acknowledged that the dog committed an unprovoked attack. *Id.* (Resp. 4/12/00 Mem. at 1-2).

B. Risk to Public Health and Safety

13. The Government has not proven by a preponderance of the evidence that returning the dog to Respondent would constitute a significant threat to public health and safety. This conclusion is based solely on the unrebutted evidence and counsel representations presented by Respondent that if the dog is returned to him, he can and will permanently relocate the dog to Warrenton, North Carolina in order to save its life. The statutory authorities presented by Respondent's counsel indicate that the dog can be housed lawfully in Warrenton, North

Carolina and the Government has presented no authority to the contrary.⁵ *See*, N.C. Gen. Stat. § 67-4.

14. The Government has proven by a preponderance of the evidence that if the dog is found in the District of Columbia after its release and immediate removal, it will constitute a significant threat to public health and safety. This conclusion is supported by the dog's conduct during and after the incident at issue, Respondent's history, and Respondent's inability to produce evidence of his ability to safeguard the public by coming into compliance with D.C. Code § 6-1021.4. Therefore, if for any reason Respondent fails to immediately and permanently remove the dog from the District of Columbia upon release, or if for any reason the dog is found in the District of Columbia after its immediate removal, the dog should be deemed a significant threat to public health and safety, and by law, the Government may then elect to humanely euthanize the dog pursuant to D.C. Code § 6-1021.3, if it deems such action to be appropriate.⁶

⁵ If it had been demonstrated that the dog could not lawfully be relocated to North Carolina, this might have suggested a different outcome, both as a matter of comity, and because it would cast doubt on Respondent's evidence and representations that he will relocate the dog "in an effort to save [its] life." (Resp. 4/12/00 Mem. at 4).

⁶ The Government has argued that this administrative court lacks the discretion to enter an order declaring that the dog is not a significant threat to public health and safety in the District only for so long as it remains outside the District of Columbia. Upon review of the statutory scheme at issue, I have concluded that the Government's restrictive view of the law is incorrect and inconsistent with effectuating the legislative purpose of the Dangerous Dog Amendment Act of 1988. There is nothing in the Act to indicate that the administrative court is prohibited from issuing a legal Order predicated on the existence of alternative facts. Unlike the retrospective determination of whether or not a dog is "dangerous" under § 6-1021.2, the determination of whether a dog can be returned to its owner without significant threat to health and safety necessarily requires an assessment of likely future conduct. The Dangerous Dog Act therefore must, and does, give this administrative court the necessary authority to tailor its remedy to address the potential for changing circumstances in threat to public safety determinations. D.C. Code § 6-1021.2(e).

C. Respondent's Motion Regarding Waiver or Reduction of Boarding and Fees and Expenses

15. Respondent has moved for a waiver or reduction of the boarding fees he owes to the District government under D.C. Code § 6-1021.2(b). The Government filed a brief in opposition asserting this administrative court is without jurisdiction to grant such relief. As an administrative tribunal of limited jurisdiction, the Office of Adjudication and Hearings cannot grant relief on statutory provisions not subject to its jurisdiction. The Government is correct to point out that there is no ambiguity in the operative statute. *See generally, Chevron v. NRDC*, 467 U.S. 837, 844 (1984). The authority to charge boarding fees is committed to the Director of the Department of Health as the Mayor's executive branch designee. This does not mean that Respondent is without legal or equitable claims to challenge assessment of the fees, only that the correct forum for such a challenge is the Superior Court of the District of Columbia as the District's trial court of general jurisdiction. Alternatively, respondent may advocate to appropriate officials in the Department of Health to grant such relief on a discretionary basis. Respondent's motion must be denied.

IV. Order

Therefore, this _____ day of _____, 2000, it is hereby:

ORDERED and ADJUDGED, that Respondent's dog, currently in the custody of the District of Columbia Government, is declared to be classified as a "dangerous dog" under D.C. Code § 6-1021.2; and it is further

ORDERED and ADJUDGED, that Respondent's dog, currently in the custody of the District of Columbia Government, does not constitute a significant threat to public health and safety in the District of Columbia, provided that it is immediately and permanently removed from the District of Columbia upon being returned to him; and it is further

ORDERED and ADJUDGED, that if the dog is not immediately and permanently removed from the District of Columbia upon its being returned to respondent, or if the dog is found within the territorial limits of the District of Columbia for any reason following its immediate removal, such circumstances are hereby determined to be and constitute a significant threat to public health and safety under D.C. Code § 6-1021.2 and § 6-1021.3. Under such circumstances, and by law, the Government may then elect to humanely euthanize the dog pursuant D.C. Code § 6-1021.3, if it deems such action to be appropriate, and it is further

ORDERED AND ADJUDGED, that the Government may microchip, tattoo, or otherwise properly mark the dog for identification prior to returning it to its owner for the

purpose of controlling any significant risk to public health and safety that would arise if the dog were returned to the District of Columbia in violation of this Order and the laws of the District of Columbia, and it is further

ORDERED, that the Government shall release the dog to Respondent in a manner consistent with the terms of this Order and District of Columbia law, and it is further

ORDERED, that Respondent's motion for a waiver or reduction of boarding costs and expenses as may be charged under D.C. Code § 6-1021.3 is hereby **DENIED**.

/s/ **5/30/00**

Paul Klein
Chief Administrative Law Judge